



U.S. Immigration
and Customs
Enforcement

September 6, 2012

AARON SWARTZ
MUCKROCK
185 BEACON STREET, #3
SOMERVILLE, MA 02143

RE: ICE FOIA Case Number 2012FOIA3220

Dear Mr. Swartz:

This letter provides the first 100 pages and a fee estimate for the remainder of the responsive records in response to your December 1, 2011 request to U.S. Immigration and Customs Enforcement (ICE). Your request was received in our office on December 9, 2011. You have requested the following:

“Any guidelines or protocols for ICE agents about the procedures for seizing domains.

Any communications between ICE and other government agencies with regard to the seized domains.

Any communications between ICE and intellectual property owners requesting domains be seized or discussing seized domains.

Any court filings requesting authorization to seize domains.

Any internal e-mails mentioning the seized sites.

Any legal memos mentioning the seized sites.”

Your request is being processed under both the FOIA, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a. Information about an individual that is maintained in a Privacy Act system of records may be accessed by that individual¹ unless the agency has exempted the system of records from the access provisions of the Privacy Act.²

Comprehensive searches were conducted within ICE’s Office of Homeland Security Investigations (HSI) and Office of the Principal Legal Advisor (OPLA). Those searches produced 16,237 pages of records. At this time ICE has completed processing the first 100 pages records. After a review of those 100 pages, I have determined that portions of the 100 pages will withheld pursuant to

¹ 5 U.S.C. § 552a(d)(1).

² 5 U.S.C. §§ 552a(d)(5), (j), and (k).

Exemption (j)(2) of the Privacy Act and Exemptions 6, 7(C), and (7)(E) of the FOIA as described below.

Privacy Act Exemption (j)(2) exempts from mandatory disclosure material reporting investigative efforts pertaining to the enforcement of criminal law, including efforts to prevent, control, or reduce crime or to apprehend criminals.

ICE has applied Exemptions 6 and 7(C) to protect from disclosure of the names, telephone numbers and email addresses of ICE employees.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

ICE has applied Exemption 7(E) to protect from disclosure agency codes, case numbers, domain names, and administrative codes internal to DHS.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

You have the right to appeal ICE's withholding determination. Should you wish to do so, send your appeal and a copy of this letter to: U.S. Immigration Customs Enforcement, Office of Principal

Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

Regarding the remaining 16,137 pages, the FOIA provides three levels of fees that may be assessed to process a FOIA request according to categories of FOIA requesters.³

Pursuant to the DHS implementing regulations, 6 C.F.R. § 5.11, individuals or non-commercial requesters are responsible to pay 10-cents a page for duplication, although the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. After a careful review of your request, I have determined that the search for records responsive to your request has taken 20.5 hours to complete and has produced 16,237 pages. Billable search costs at \$7 per quarter hour are \$518.00 and billable duplication costs are \$1,613.70 for a total of \$2,131.70.⁴


Since the total fee exceeds \$250.00, you must make an advance payment of at least half and up to the amount of the entire fee before we can continue to process your request. See 6 C.F.R. § 5.11(i). Please submit your check or money order in the amount of at least \$1,065.85, made payable to the Treasury of the United States, to this office within 10 days from the date of this letter. Please mail your payment to this office at the following address:

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., STOP 5009
Washington, DC 20536-5009

If we do not receive an advance payment of \$1,065.85 from you within 10 days from the date of this letter, we will assume you are no longer interested in receiving the remaining 16,137 pages you have requested and will consider that portion of your request withdrawn.

If you need to contact our office about this matter, please refer to FOIA case number **2012FOIA3220**. This office can be reached at (866) 633-1182.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer

Enclosures: 100 pages of records

³ See 5 U.S.C. § 552(a)(4)(A)(ii)(I),(II),(III) (2000).

⁴ 20.5 hours search minus 2 hours search free equals 18.5 hours. 18.5 hours at \$7 per quarter hour equals \$518.00. 16,237 pages minus first 100 free equals 16,137 pages. 16,137 pages at 10-cents per page duplication fee equals \$1,613.70. \$1,613.70 plus \$518.00 equals total fee due of \$2,131.70.